File No. 346 of

19 32.

Collection No.

Pros. Serial Nos. 1 - 9

Subject.

INCOME-TAX APPEAL No.2 OF 1932-33.

by

Mr. V. Chinnaswamy Mudaliar.

Previous References.	Later References.

ue).

S&P—(G-745)—23-9-30—50,000.

INCOME-TAX APPEAL NO. 2/1932-33.

Mr.V.Chinnaswamy Mudaliar,
Jewellers' Street,
Bangalore. Appellant.

~~I.T.C.~~
S.N.1. (A)

Appeal petition presented on the 26th October, 1932, by Mr.S.K.Venkatarangaiengar, Counsel for the Appellant.

(A) (1)

The assessment in this case was made by the Collector and Assistant Commissioner. The assessee has, therefore, a right of appeal to the Commissioner.

(2)

The petition is in time and has been duly stamped. The assessment records may be called for. Usual draft submitted.

3-11-32

Commissioner.

S.N.2 Issued: No.7558 dated the 9th November, 1932.

S.N.3. Letter No.F/190 dated the 12th November, 1932, from the Collector and Assistant Commissioner of Income-tax, C. & M. Station, Bangalore.

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(3)

(Assessment records received).

S.N.4 Letter No.F-190 dated the 7th January, 1933, from the Collector and Assistant Commissioner of Income-tax.

(4)

The assessment records received from the Assistant Commissioner may be sent back, as desired, and their early return asked for, as the appeal filed before the Commr. has not been disposed of. Draft submitted.

S.N.1

14/1/33

(Para 4 only)

Contra

14/1

S.N.5 Issued No.382, dated 17-1-33.

S.N.6 Letter No.F-190 dated 26-1-1933 from the Collr. and Assistant Commissioner of Income-tax, C. & M. Stn., Bangalore.

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(5)

(Records received back and submitted below).

S.N. 1 (A) (K) P.U.C

Income-tax Appeal Petition No.2/1932-33. S/26/10/32

Mr.V. Chinnaswamy Mudaliar,
Contractor, Jewellers' Street,
Bangalore.) Appellant.

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(6) The assessee in this case is Mr.V.Chinnaswamy Mudaliar, a wealthy land-lord of the Station, doing considerable business in Building and Excise contracts. (B) He returned an income of Rs.19,810/- for the year ending 31st March,1932, but produced no accounts in support of the return. The I.T.O. (Collector) estimated the (A) assessee's income at Rs.43,330/- and made an assessment under section 23(3). on 27.9.32

(1) The assessee appeals under section 30(1). The assessment was made by the Collector, acting as I.T.O., and an appeal, therefore, lies to the Commissioner. It has been presented within the prescribed time and has been properly verified and stamped.

(5) The grounds of appeal are:-

(i) The I.T.O. was not justified in assessing the appellant on the income received by his son from Municipal Contracts, amounting to Rs.3,560/-.

(ii) The income from ~~Building~~ Contracts ought to have been calculated at 8% of turnover, as in past years, instead of at 10% adopted by the I.T.O.

13,129/-

(iii)

(iii) As the income from Excise Contracts is shared by him with 2 other partners, he ought to have been assessed only on his one-third share, as in previous years, and not on the whole, as has been done by the I.T.O. in the current year.

(iv) The petitioner being a subject of the Mysore State, the I.T.O. in the Civil and Military Station has no jurisdiction to assess him to income-tax at all, and that, in any event, he was wrong in having charged tax at the rate adopted by him and in further surcharging him by an extra 25 per cent.

Point (i) - Son's income. Mr.Chinnaswamy Mudaliar has been treated for the purposes of the assessment as a Hindu undivided family and assessed on the income of both himself and his son. The principle of taxation of a Hindu undivided family is that :-

"Where the income, profits and gains of a member of an undivided Hindu family consist of his personal earnings and acquisitions by his own exertions, they must be treated as his self-acquired property and not as joint family property, unless they flow from the employment in business or otherwise of the joint funds".

In the order of assessment, it is stated that the assessee "agrees to the profit from the Municipal contracts executed through the agency of his son being assessed in his own hands as in the past years". In his memorandum of appeal P.U.C. the assessee denies having agreed to the income of his son being clubbed with his own for the purposes of the assessment and draws attention to his letter to the I.T.O. dated the 22nd September,1932, wherein he had stated definitely that he had no connection with the contracts executed by his son and that the income therefrom might therefore be separately assessed. The I.T.O.'s

statement

statement in the assessment order is apparently based on the notes ~~subsequently~~ taken down by him on 23.9.32 when he discussed the case personally with the assessee. But these notes have not been signed by the assessee. In view of the letter written by the assessee, the I.T.O. should have recorded a formal statement from the assessee to the effect that he had subsequently agreed to his son's income being included in his own. The I.T.O. having failed to do so, we cannot bind the assessee to his alleged "oral" agreement, which he now denies altogether. Nor can the fact that the son's income was included in the father's income in the past years be a valid ground in itself for so including it this year also, if, as a matter of fact, the father has no connection with the contract work done by his son or the income received therefrom.

The point at issue is whether the profits earned by the assessee's son are his personal earnings acquired by his own exertion - in which case they are liable to be taxed separately - or whether they flow from the employment in business of the joint family funds, in which case they form part of the joint family property liable to be taxed in the petitioner's hands. This is a question of

fact

fact and cannot, it is submitted, be decided from the materials available in the record. The assessee ought to have been asked to substantiate his statement that he had no connection whatever with the contracts executed by his son. As this has not been done, it is for consideration whether the case may be remanded to the I.T.O. and the appellant given an opportunity to let in evidence on this point.

It may be mentioned that section 14, to which the appellant refers, has no application to the present case, as that section (section 14(1)) relates to exemption from income-tax of "any sum which an assessee receives as a member of a Hindu undivided family". That is, if, in the present instance, the assessee's son's income from contracts is treated as joint family income and assessed to income-tax in the hands of the father, such income should not again be taken into account - in virtue of section 14(1) - when assessing the son individually. As stated already, what we have to decide in the present case is whether the son's income is actually part of the joint family income or whether it is his personal and individual income. The case may, therefore, as suggested in para 10 ante, be referred back to the I.T.O. for a definite finding on this point.

Point (ii).

(12)

Point (ii) - Building Contracts - Percentage of profit. The contention is that the percentage of net profit from building contracts should have been worked out at 8% of turnover, instead of 10%. It is understood that 10% ~~is~~ net is the usual rate adopted by the I.T.O. in the case of other building contractors also. The percentage basis of determining profits is resorted to only in cases where the assessees fail to produce accounts showing their actual profits or losses and is, therefore, only a rough method of arriving at the income. In such cases, the I.T.O. is evidently not bound to adopt the same rate for all time to come. On the other hand, when an assessee systematically fails to produce accounts showing his actual income and prefers to be assessed on a percentage basis, it is the duty of the I.T.O. to raise the percentage rate year after year and thus compel the assessee to disclose his actual state of affairs. The appeal therefore fails on this ground.

(13)

Point (iii) - Excise profits. No partnership deed or accounts showing distribution of profits between the three alleged partners were produced before the I.T.O. The assessee admits that a partnership deed was drawn up in respect of contracts entered into in 1928-29, but has

no

no explanation to offer why a similar deed was not drawn up or an account showing distribution of profits maintained in 1930-31 and 1931-32 (The contract was not taken in 1929-30). In the absence of any evidence in proof of the existence of a partnership, the assessee was informed by the I.T.O. that the entire profits from the Contracts standing in his name would be treated as his own income and assessed to income-tax in his hands. The assessee now contends that the existence of a partnership was ~~partners were separately assessed~~ recognised in previous years and that the other two partners have specified in their return for 1932-33 their share of the income under this head and adds that if he had been afforded an opportunity, he would have satisfied the assessing officer by further proofs that the income was distributed among the three partners (including himself) in shares of a third each. The appellant had ample opportunities to prove the alleged partnership before the assessment was made, and the only point for consideration, therefore, is whether the assessee should be given, as a matter of grace, one more chance to prove it.

Point (iv) - Jurisdiction. The appellant's contention is that "the Income-tax Officer erred in assuming jurisdiction to charge the petitioner a subject of Mysore State income-tax and that at the rate charged and in further

surcharging

"Where any Act of the Indian Legislature enacts that income-tax shall be charged for any year at any rate or rates applicable to the total income of an assessee, tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions of, this Act in respect of all income, profits and gains of the previous year of every individual, Hindu undivided family, company, firm and other association of individuals"

The rates at which income-tax should be charged in the Civil and Military Station during any particular year are, therefore, the rates fixed in the Indian Finance Act of that year. Under Schedule IV of the Indian Finance Act, 1931, read with section 2 of the Indian Finance (Supplementary and Extending) Act, 1931, the rate of tax applicable in the case of an assessee (other than a compnay), when the total income is Rs.40,000 or upwards, is 25 pies in the rupee. The petitioner's income during the year was Rs.43,300/-, and the rate of tax applied, viz, 25 pies in the rupee, was therefore correct. As regards surcharge, Section 9 of the Indian Finance (Supplementary and Extending) Act, 1931, provides that "in respect of the year beginning on the 1st day of April, 1932, each rate of income-tax and super-tax specified in Schedule IV to the Indian Finance Act, 1931, ... shall be increased by one fourth of its amount". The surcharge of 25% was also therefore correctly levied.

It may be that the assessee feels that the levy of income-tax itself in the Station and the high rates at which

Draft memo submitted, with fair, for favour of signature.

(From para 11)

12.4.33

Coyur.

S.N.7 Issued No.2891, dated 12-4-33.

18

This appeal has been posted for hearing at 11 A.M. on Wednesday the 26th April, 1933.

(Paras 6-17 & 18)

26/4/33

Coyur

19

Counsel present & adv for adjournment.
Case for 28/4/33

20

File submitted.

27.4.33

Commissioner.

21

Counsel heard.
Further hearing adjourned to 29th May 1933.
By Order,
28.4.33
I.T. clerk

rate to be fixed by a deferred enactment. The Indian Finance Act 1931, not being an amending Act, cannot be held to apply unless it has been specifically applied by a notification of the Governor General in Council.

24 The Finance Act 1931 (i.e, the principal Act) not being in force, the Indian Finance (Supplementary and Extending) Act 1931 which amends the principal Act is not also in force.

25 The case may also be viewed from another aspect. Section 3 of the Income-tax Act provides in effect that "Where any Act of the Indian Legislature enacts that income-tax shall be charged for any year at any rate or rates applicable to the total income of an assessee, tax at the rate or those rates shall be charged for that year" xx x The Indian Legislature referred to in the Sec. obviously is the British Indian Legislature. The first proviso to the Notification No.261-I, dated the 24th April, 1929 already referred to lays down that references to British India in the enactments applied shall be read as references to the Civil and Military Station of Bangalore. The reference in Section 3 to the Indian Legislature has therefore to be read as to the legislature of the Civil and Military Station, Bangalore, such legislature being the Governor-General in Council exercising the powers conferred by the Indian (Foreign Jurisdiction) Order in Council 1902. It follows then that the rate contemplated by Sec.3 has to be fixed by the Governor-General in Council by a Notification ~~in the~~ and that in its absence ~~of which~~ no tax can be charged.

26 The position is more or less analogous to the case which arose under the Prevention of Cruelty to Animals Act as applied to the Station which came up before the Addl.Judge. Section 1 of the Act contemplated the issue by the Local Govt. of a notification

extending

extending the provisions of the Act to the Local area. No such notification was issued by the Resident. The position taken on behalf of the Govt. being, that the Govt. of India having applied the provisions of the Act so far as they may be suitable, no further notification was required. The Addl.Judge over-ruled this view. A strict conformity to the formalities prescribed by law is liable to be insisted on in a fiscal enactment just as in the case of an Act containing penal provisions.

As the appeal raises an important question of law affecting the administration of the Income Tax in the Civil and Military Station, it seems best to make a reference in the matter to the High Court under section 66 of the Income Tax Act. If the Commissioner does not do so, it is open to the party to move the High Court which, if not satisfied with the correctness of the Commissioner's decision may ask the Commissioner to state the case and refer it. It is best that the Commissioner himself moves in the matter suo motu.

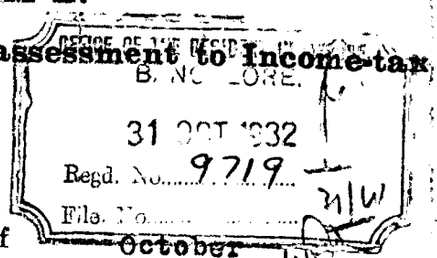
Secretary

(From Para 21)

C.O. No. 334
22.4.33

FORM B.

Form of appeal against assessment to Income-tax



e Assistant Commissioner of

e twenty-sixth day day of October

e petition of Mr. V. Chinnasamy Mudaliar of Po
galore Bazaar, District Bangalore sheweth as fol

1. Under the Indian Income-tax Act, 1922, your petitioner h assessed on the sum of Rs. 43,330-0-0 for the year commencing day of April, 1932. The notice of demand, attached hereto was served upon him on 28th Septr. 1932. (A)

2. Your petitioner's income accruing or arising or received or deemed under the provisions of the Act to accrue or arise or to be received in ~~British India~~ for the year ending the 31st day of March 19 33 amounted to Rs. ~~6995-15-0~~ 19870-0-0. (B)

3. Such income and profits actually accrued or arose or were received during the period of twelve months and nil days.

4. During the said year your petitioner had no other income or profits.

5. Your petitioner has made a return of his income to the Income-tax Officer Bangalore, Cantt under section 22, sub-section (2), of the Act and has complied with all the terms of the notice served on him by the Income-tax Officer under section 23 (2) and/or [section 22 (4)].

Your petitioner therefore prays that he may be assessed accordingly (or that he may be declared not to be chargeable under the Act).

(Signed) V. Chinnasamy Mudaliar

Grounds of appeal.

1. The learned Incometax Officer erred in stating that the petitioner agreed to being assessed in his own hands the profit from the Municipal Contracts.

2. The learned Income-tax Officer further erred in assessing that the Municipal Contract was being executed by the petitioner through the agency of his son. On the other hand the petitioner has clearly stated in his reply dated the 22nd Septr. 1932 to the Income-

(D)

, the petitioner named in the above petition do declare that what is stated therein is true to the best of my information and belief.

(Signed)

I. T. 16.
DCFP—803IT—(G-1034)—20-1-31—20,000.

Income-tax Officer's letter dated the 20th September 1932 that his son may be separately assessed in respect of his income from the Municipal Contract, as he had no connection with the same. The learned Collector and Income-tax Officer erred in the circumstances, in treating it as the petitioner's income.

3. That in any event the income from the said source cannot by virtue of Section 14 of the Income-Tax Act be taken into consideration in assessing the petitioner's income. That at all events the income from this source ought to have been calculated at 8% as hitherto on the amount of the bill and not at 10 per cent.

4. Contrary to the procedure in the previous years, the learned Collector and Incometax Officer erred in treating the income from the Excise Contract as his own income and the reasons assigned therefor are not valid and tenable. The petitioner if he had been afforded an opportunity would have satisfied the assessing officer by further proofs, that the income was distributed among 3 partners (including the petitioner) in shares of a third each. The other two partners had supported the petition by specifying in their return their share of the income under this head. The learned Income-tax Officer has assigned no reasons whatsoever for ~~separating~~ deviating from his original practice in this matter.

5. The learned Income-tax Officer erred in assuming jurisdiction to charge the petitioner a subject of Mysore State Income-tax and that at the rate charged and in further surcharging him by an extra 25%.

6. The order of the learned Income-tax Officer is otherwise opposed to law, facts and probabilities.

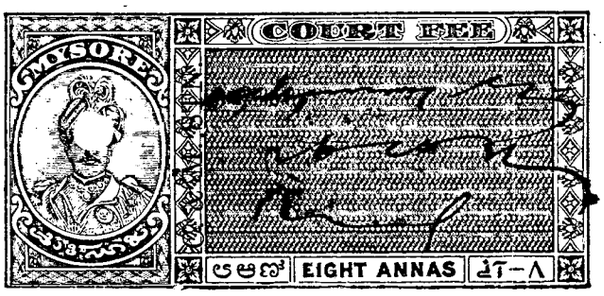
K. Venkatarangiengar
Adv. for Petr.

V. Chinnaswamy Mudaliar
26/10/32

I, V. Chinnasawmy Mudaliar, the petitioner named above, do hereby declare that what is stated above is true to the best of my information and belief,

V. Chinnaswamy Mudaliar

F-190



Income-

C & M Station, Bangalore *District.*

(1) Year of assessment. 1932-33

(2) Name of Assessee (with complete address). Mr. V. Chinnaswamy Mudaliar, Jewellers' Street.

(3) Status:—(Whether Individual, registered or unregistered firm, Hindu Undivided Family, Company or other association of individuals.)

Hindu undivided family

(4) Sources of income with exact nature of business.

Property
Business - Building & Excise Contract
Other Sources - Dividends

(5) Branches:—

(*a*)
(*b*)
(*c*)

(6) Shares in (*a*) Registered and

(*b*) unregistered Firms.

(7) Partners—(*a*) names with shares

(*b*) are they separately assessed?

(8) Income returned. Rs. 19,810/-

(9) Accounts—(*a*) Books produced. Nil

(*b*) Method of accounting. —— (*c*) Accounting period. Official year 1931-32

(10) Section and Sub-section under which assessment made. 23(3)

ASSESSMENT ORDER ~~XXXXXXX~~.

Not disputed in appeal

The assessee says that he maintains no accounts for any part of his business or for rents received from his properties. He has, however, prepared, at the instance of the Department, a statement of actual rents received by him during the year of account.

He agrees to the profit from the Municipal contracts

I. T. 88.
MGIPC—S1—1693(IT)DCF—(G-824)—10-12-29—6,00,000.

executed through the agency of his son being assessed in his own hands as in the past years. In the absence of accounts, the income from this source will be estimated at 10%.

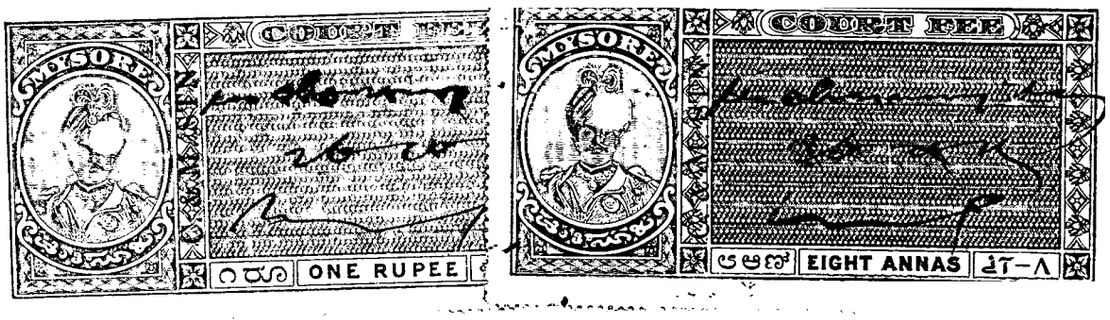
Regarding the excise contract, he has not produced the deed of partnership and accounts showing the distribution of the profits between the partners. In the absence of either the deed or the accounts, it is difficult to recognise the existence of a partnership. The profit or loss made by him, according to the figures reported by the Excise Department, will therefore be adopted as his own individual income.

Assessment will accordingly be made as follows:-

Property.-			
Gross rental value		14,748	
Less			
1/6th for repairs	2,458		
Collection charges	300		
		2,758	
			Rs.11,990
Business.-			
(1) Building contract in his own name at 10% on turnover		13,129	
(2) Contract in his son's name at 10%		3,560	
(3) Excise profit		17,828	
		34,517	
Excise loss		3,524	
			Rs.30,993
Dividends.			
Gross ...			Rs. 347
Total income			Rs.43,330

Collector & Income-tax Officer.

KMP.



In the Court of the Commr of Income-tax Central Station, BANGALORE.

Incometax A. No._____of 19 32

Appellant (Petr)		Respdt. (Cr.-Petr.)
V. Chinnasawmy Mudaliar.	Vs.	The Collector and Income-tax Officer, C & M. Stn., Bangalore.

I/we the Appellant, above-named, do hereby appoint and retain MESSRS. C. V. NARASIMHAIENGAR, B.A., B.L., S. K. VENKATARANGAIENGAR, B.A., LL.B., B. T. RAMASWAMI, B.A., B.T., LL.B., and S. LAKSHMINARASU, B.A., B.L., Advocates, to appear for me/us in the above suit, proceeding, petition or appeal, and to conduct, and prosecute or defend the same and all proceedings that may be taken in respect of any application for execution of any decree or order passed therein. I/we empower my/our Advocates to appear in all miscellaneous proceedings in the suit or matter till all decrees or orders are fully satisfied or adjusted, to obtain the return of documents, draw any moneys that may be payable to me/us in the said suit or matter, withdraw, compromise or refer to arbitration the suit, and take all other steps that they may deem proper in the matter. And I/we undertake to ratify and confirm all legal acts done or caused to be done, and to pay all fees, costs, charges and expenses which may be incurred by my/our said Advocates in the case by virtue of these presents.

In witness whereof I/we have hereunder set my/our hand this 25th day of Octr. 19 32

Accepted.

K. Venkatarangaiengar & Co.

Advocates

for Pet.

V. Chinnasawmy Mudaliar

Signed by the Executant in my presence.

K. Venkatarangaiengar & Co.

Vest & Co., The National Press, Bangalore.

In the Court of the Commissioner
of Income Tax, C & M. Station,
Bangalore.

Income Tax Ap. No. _ of 1932.

Petr (Appellant)

Mr.V.Chinnasawmy Mudaliar.

Vs.

Cr.-Petr (Respdt).

The Collector and Income-tax Officer.

Filed on 26th Octr. 32.

Mr.S.K.Venkatarangaiengar,B.A.,LL.B.
Adv. for Petr.

No. F/190.

A
14/11

Office of the
Collector and Assistant Commissioner of Income-tax,
Civil and Military Station, Bangalore,

Dated the 12th November 1932.

FROM G. H. Cooke, Esq., M. C., I. C. S.,
COLLECTOR AND ASST. COMMR. OF INCOME-TAX,
CIVIL AND MILITARY STATION,
Bangalore.

To
The Secretary to the Resident
& Commissioner of Incometax,
Civil and Military Station, Bangalore.

C.N-1

Subject.— Incometax Appeal petition No.2 of 1932-33 - Mr. V. Chinnaswamy Mudalier, Jeweller's Street, Bangalo
Your No.7558 dated 9th November 1932

SIR,

C.N-2

I have the honour to send herewith the assessment and Appeal records ~~for~~ from 1929-30 to 1932-33.

OFFICE OF THE RESIDENT IN MYSORE.
BANGALORE.
15 NOV. 1932
Regd. No. 10280
No. 1614

I have the honour to be,
Sir,
Your most obedient Servant,

14.11.

Collector & Asst. Commr. of Incometax.

5

No.382
Cr. 2/6.

17th Jan 1933

From

Secretary to the Resident
& Commissioner of Income-tax.

To

The Collector and Assistant
Commissioner of Income-tax,
C. & M. Station, Bangalore.

Income-tax assessment - 1931-32 -
Mr.V.Chinnaswamy Mudaliar,
Jeweller's Street, Bangalore -
Letter No.F-190 dated the 7th
January 1933 from the Income-tax
Officer.

S.N.4

The records are returned, as desired. They may kindly be sent back to this office as early as possible, as the appeal before me has not been disposed of/decided.

× S.N. 1

SECRETARY TO THE RESIDENT
& COMMISSIONER OF INCOME-TAX.

16.1.33

Rec'd 16/1

No. F-190

6

Office of the
Collector and Assistant Commissioner of Income-tax,
Civil and Military Station, Bangalore,

Dated the 26th January 1933.

FROM
G. H. Cooke, Esq., M.C., I.C.S.,
COLLECTOR AND ASST. COMMR. OF INCOME-TAX,
CIVIL AND MILITARY STATION,
Bangalore.

To

OFFICE OF THE RESIDENT IN MYSORE.
BANGALORE.
27 JAN. 1933
Regd. No. 842
File. No. 346/32

The Secretary to the Resident
and Commissioner of Income-tax,
Civil and Military Station, Bangalore.

Subject.— Income-tax records - Mr. V. Chinnaswamy Mudaliar

SIR,

S. N. 5

The records received with your memo No. 382/346-1932 dated the 17th January 1933 are herewith returned with thanks.

I have the honour to be,
Sir,
Your most obedient servant,

Collector and Asst.
Commissioner of Incometax.

KMP.

8

Bangalore.
27/5/33.

To
The Clerk of the Court - for communication
to Mr. Sankaran Nair
and Sir D'Cruz.

Re K. Chinnaswamy Moodi's Case.—

Dear Sirs,

As my client is anxious to be present when the above case is taken up for hearing on the 29th instant, which he cannot do owing to his daughters' marriage which is fixed for the same date, I shall thank to submit to the Commissioner, whether he can grant a post-ponement of the case to any convenient near date

Adjourned to Tue 30th May 1933
under Commissioner's Order
27.5.33

Yours faithfully,
K. Venkatachariar

Copy delivered to Appellant on 15-7-33

9

IN THE OFFICE OF THE ASSISTANT COMMISSIONER OF INCOME-TAX,

CIVIL AND MILITARY STATION, BANGALORE.

No. 5093 & 5094 --oOo--

Dated the 12th July 1933.

Before Major G. Kirkbride, I.A.,

Secretary to the Hon'ble the Resident and Assistant Commissioner of Income-tax.

Income-tax Appeal No.2 of 1932-33.

Mr.V.Chinnaswamy Mudaliar, Contractor, Jeweller's Street, Bangalore. ..) Appellant.

Order.

The appellant returned an income of Rs.19,810/- for the year ending 31st March 1932, but produced no accounts in support of his return. The Income-tax Officer (Collector) assessed him under section 23(3) on an estimated income of Rs.43,330/- as follows:-

Property.	Gross rental value.		Rs.14,748/-	
	Less 1/6th for repairs.	Rs.2,458/-		
	Collection charges.	" 300/-		
			Rs. 2,758/-	
				Rs.11,990/-
Business.	(1) Building contracts in his own name at 10% of turnover. ..		Rs.13,129/-	
	(2) Contract in his son's name at 10% of turnover.		Rs. 3,560/-	
	(3) Excise profit		Rs.17,828/-	
			Rs.34,517/-	
	Excise loss.		Rs. 3,524/-	
				Rs.30,993/-
Dividends	Gross.			Rs. 347/-
	Total income.. ..			Rs.43,330/-

Against this assessment, an appeal has been preferred to

me

to assessment being made on the basis of a Hindu Undivided Family. In view of the appellant's written statement to the contrary I consider that the Income-tax Officer would have been wise to have obtained the assessee's written agreement to the proposed assessment. The fact that in past years the son's income was included in that of the father is by itself no ground for including it this year also. Whether the income of the son this year is his own personal earnings acquired by his own exertion is a question of fact which cannot be decided from the materials available before me. I therefore remand the case on this point to the Income-tax Officer with the direction that he will reconsider the point in the light of any fresh evidence that the appellant may be able to bring.

In regard to the second ground of appeal, the point as to whether the profits should have been assessed at 8 per cent of the annual turnover or at 10 per cent would be easy to decide if the appellant gave any help to the Income-tax Department by producing his accounts. But it appears that he has systematically failed for years to do so and preferred to be assessed on a percentage basis. In this case it is clearly the duty of the Income-tax Officer to charge a percentage sufficiently high to make it to the advantage of the assessee to disclose the actual state of affairs. On this ground therefore the appeal fails.

In regard to the third ground of appeal, the appellant has produced no partnership deed or accounts to show distribution of profits between himself and his partners. Any reasonable man, particularly a business man, part of whose business was conducted on a partnership basis, would take care either to have a deed or statement of accounts to prove the partnership. I am of opinion that in their absence the Income-tax Officer rightly

rightly refused to consider the claim and on this ground too the appeal fails.

In regard to the 4th ground of appeal, the contention that the Income-tax Officer had no jurisdiction to assess the appellant to income-tax merely because he is a subject of Mysore State is clearly unsustainable and I am surprised that it was ever raised. Whether, for the purpose of this ...t, the appellant is a subject of Mysore [redacted] or any other country, is immaterial. So long as he enjoys an income which accrues, arises or is received in the Civil and Military Station, he is liable to be assessed under the Act as in force within the Civil and Military Station. On this ground also the appeal fails.

Major,
ASSISTANT COMMISSIONER
OF
INCOME-TAX.

To the Appellant through his Advocate,
Mr. S.K. Venkatrangaiengar, Bangalore City.

" the Collector and Income-tax Officer,
Civil and Military Station, Bangalore, with the assessment records.

PKH/